Appeal Decision

by [redacted] BSc (Hons) MRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 as Amended

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [redacted]@voa.gov.uk

Appeal Ref: 1841964

Planning Permission Ref. [redacted]

Proposal: Construction of 9no. dwellinghouses with associated access and parking (following demolition of existing building)

Location: [redacted]

Decision

I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

Reasons

1. I have considered all of the submissions made [redacted], acting on behalf [redacted] (the Appellant) and by [redacted], the Collecting Authority (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

    a) Planning decision ref [redacted] dated [redacted];

    b) Approved planning consent drawings, as referenced in planning decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted]; and

    f) Appellant comments on CA representations, dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for 'Construction of 9no. dwellinghouses with associated access and parking (following demolition of existing building).'

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted] . This was calculated on a chargeable area of [redacted] m² at the basic rate of £[redacted] /m².

4. The Appellant requested a review under Regulation 113 in [redacted] . The CA responded on [redacted] , confirming their view that the Liability Notice was correct.

5. On [redacted] , the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted] . This was calculated on a net chargeable area of [redacted] m² at a base rate of £[redacted] /m². The net chargeable area was calculated by deducting the floor area of the existing building from the GIA of the proposed building.

6. The Appellant's grounds of appeal can be summarised as follows:

    a) The existing building was in lawful use during the relevant period and should therefore be set off against the CIL charge.

7. The CA has submitted representations that can be summarised as follows:

    a) There is no evidence that the property was in lawful use and therefore no off set is warranted.

Lawful use

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows "the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development" to be deducted from "the gross internal area of the chargeable development."

9. "In-use building" is defined in the Regulations as a relevant building that contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

10. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

11. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of "in-use building" then it can deem the GIA of this part to be zero.

12. The appellant and the CA appear to agree that the property was a relevant building with consent for use as a social club. This dispute therefore surrounds whether the property was in lawful use during the relevant period. Planning permission was granted on [redacted] and therefore the relevant period runs from [redacted].
13. The CA and appellant have both provided images taken from Google Streetview between [redacted] and [redacted]. These images appear to show that the property was boarded up throughout the relevant period. The CA state this demonstrates that the property was not in use, whereas the appellant states that the windows were boarded for security purposes. The appellant further comments that the images demonstrate that maintenance has occurred to the land and property during this period. The CA comment that this maintenance is an expectation of property ownership and does not demonstrate use.

14. The appellants have provided additional internal photographs from [redacted] that show fixtures and fittings such as the bars, seating and blinds are all still in place. They state that this demonstrates the club was capable of immediate use and that if planning had not been forthcoming, the "fall-back position" was to reopen.

15. The appellants state that business rates have been paid at the property since [redacted] and that the charge has been backdated to [redacted]. They suggest that this is evidence of lawful use. The CA comment that business rates are often payable on vacant properties and therefore payment of rates is not evidence of use.

16. The appellants refer to the technical CIL manual published by the VOA and in particular Example 16 of Appendix 1. Example 16 relates to a factory where a single room was allegedly being used for storage. The comments state various factors that would need to be considered in determining lawful use. They also refer to the Hourhope Case which they say demonstrates that lawful use is a matter of fact and degree.

17. The CA have referred to three CIL appeals determined by the VOA on different properties. They suggest that these decisions support their view the building must be in actual use to demonstrate lawful use.

18. In my opinion, the evidence is clear the property was not actively being used for its lawful use as a social club. The payment of business rates and maintenance of the property does not in itself demonstrate use.

19. The appellants argue that the property was maintained to allow it to be reopened at any time. The judgment in the Hourhope Case states that if a *"use is interrupted for a period, the question whether it thereby ceases to be "in use" must be one of assessment of the length of and reasons for the interruption, and the intentions of those who previously used and may in future use the building."* It goes on to say that if a property is temporarily closed, *"generally the stock, furniture and any machinery used would remain in situ so that activity could resume after a short period."* In this case, the social club has been closed for business for several years and whilst the furnishings may have been retained, I do not accept that this closure was for a "short period."

20. In the Hourhope case, it was also determined that the council *"was entitled to conclude that the use as a public house ended when the pub closed for business with no fixed or definable date for reopening."* In this case, it appears that the primary intention of the owners of the social club was to demolish the property and redevelop the site into residential properties, with a fall-back position of reopening the club if planning was rejected. I do not accept that this fall-back position demonstrates a substantive or realistic intention to reoccupy the property.

21. I am therefore of the opinion that the property was not in lawful use and can therefore not be offset against the GIA of the proposed development.

22. On the basis of the evidence before me, I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

[redacted]BSc (Hons) MRICS
Valuation Office Agency
16 May 2024